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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,646	02/24/2004	Lewis George Gradon	1171/41687/139	2372

279 7590 09/25/2006

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CHICAGO, IL 60603

EXAMINER
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DIXON, ANNETTE FREDRICKA

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/785,646	<b>Applicant(s)</b> GRADON ET AL.	
	<b>Examiner</b> Annette F. Dixon	<b>Art Unit</b> 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. The amendment filed on June 29, 2006, has been entered. Examiner acknowledges **Claims 1-4 and 6-14** are pending in this application, with **Claims 1, 8, and 9** having been amended.
2. Applicant's arguments, see pages 5-9, filed June 29, 2006, with respect to the rejection(s) of claim(s) 1-14 under 35 U.S.C. §103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kwok (6,532,961) in view of McGinnis (4,907,584)

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. **Claims 1-4 and 6-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwok (6,532,961) in view of McGinnis (4,907,584).

6. **As to Claims 1 and 9**, Kwok et al teaches an interface for delivering pressurized gases to the user comprising a housing **17** configured to receive gases and deliver them to a user, a forehead rest **25** having a single area of contact with the user's forehead and a bridge member (**the combination of elements 12 and 14**) on which the forehead rest is mounted and which extends between the forehead rest and said housing. Yet Kwok does not teach the a width of the bridge member at a region where the forehead rest is mounted is substantially no greater than any other region of the bridge member, and said bridge member including attachment points for headgear, said attachment points lying in approximately mid sagittal plane. However, at the time the invention was made the placement of attachment means in the approximately mid sagittal region was well known. Specifically McGinnis teaches a face mask having a bridge member that is no larger in width than any other region on the bridge member and the placement of attachment means inside the bridge member for the purpose of providing a means for retaining the mask with respect to the user's face. (Column 4, Lines 63-66 and Column 5, Lines 56-61). Therefore, it would have been obvious one having ordinary skill in the art at the time the invention was made to modify the device of Kwok to include the structural arrangement of the attachment means in the mid sagittal plane for the purpose of assisting in the sealing engagement of the mask to the user's face.

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7. **As to Claims 2 and 10**, Kwok et al teaches an interface wherein said bridge member is adjustable or configurable in orientation with respect to the housing (**See Col. 5**).
8. **As to Claims 3 and 11**, Kwok et al teaches an interface wherein said bridge member includes a pivoting engagement to said housing (**See Col. 5**).
9. **As to Claims 4 and 12**, Kwok et al teaches an interface wherein said bridge member has two substantially parallel sides (**See Col. 1**).
10. **As to Claims 6 and 13**, Kwok et al teaches an interface wherein said interface is a mask (**See Col. 4, lines 23-39**).
11. **As to Claims 7 and 14**, Kwok et al teaches an interface wherein said mask is a nasal mask (**See Col. 4, lines 23-39**).
12. **As to Claim 8**, the system of Kwok as modified by McGinnis teaches an interface for delivering pressurized gases, wherein the attachment points **26** are positioned on the bridge member substantially opposite to the region where the forehead rest is mounted, the attachment points substantially symmetrically spaced either side of the mid sagittal plane and wherein the distance between the attachment points is substantially no greater than the width of the forehead rest.

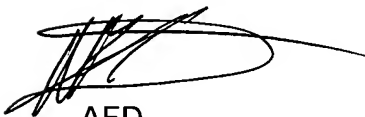
### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent 6796308, and 6196223.

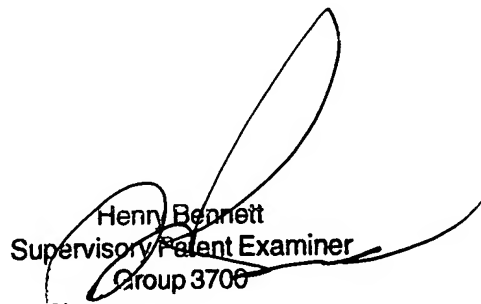
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette F. Dixon whose telephone number is (571) 272-3392. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AFD  
September 14, 2006



Henry Bennett  
Supervisory Patent Examiner  
Group 3700